

37



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,552	07/06/2001	Lauraine Wagter-Lesperance	6580-239	7030

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Micheline Gravelle  
Bereskin & Parr  
40 King Street West  
Box 401  
Toronto, ON M5H 3Y2  
CANADA

EXAMINER

NOLAN, PATRICK J

ART UNIT PAPER NUMBER

1644

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/899,552	<b>Applicant(s)</b> WAGTER-LESPERANCE ET AL.	
	<b>Examiner</b> Patrick J. Nolan	<b>Art Unit</b> 1644	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 39-52 is/are pending in the application.  
     4a) Of the above claim(s) 39-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22- 24 is/are rejected.
- 7) ☒ Claim(s) 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Art Unit: 1644

1. Claims 1-24 and newly added claims 39-52 are pending.
2. Newly submitted claims 39-52 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the additional claims are drawn to measuring CMIR in addition to antibody responses. These additional claims are distinct from the originally filed claims as a prior art search for antibody responses would not encompass a prior art search for CMIR, so therefore it would be an undue burden to search two inventions in one application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 39-42 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. It is noted that for claims 4, 5 and 22-24, the effective filing date is limited to the disclosure of the instant application. So, for prior art purposes the date of invention for claims 4, 5 and 22-24 is 7-6-01.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 and 6-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Wagter et al. (J. Dairy Science, 1996, Vol. 79(Suppl 1), page 119, reference 25 in the IDS submitted 11-5-01).

Art Unit: 1644

Applicant's arguments filed 11-30-05 have been fully considered but are not found persuasive.

Applicant argues the prior art does not teach comparing the antibody response to an average from the population and further the prior art does not teach a total antibody response for comparison purposes.

The Wagter et al., reference clearly teaches that hyporesponsive cows are the norm, i.e. average. Furthermore Wagter et al., does teach the measurement of total serum IgG1. It is noted the Examiner requested further information about the poster presentation of Applicant's in the last office Action. A failure to reply to the actual disclosure of the entirety of poster presentation disclosure will result in a 37 CFR 1.105 request.

6. Claims 4, 5 and 22-24 are rejected under 35 U.S.C. 102(b) as being anticipated by CA 2,255,423, publication date of 6-10-00.

It is noted claims 22-24 are included in this rejection as CA 2,255,423, also teaches determining secondary, tertiary and quarternary responses and weighing negative responses appropriately with a coefficient of about 1.5, (see pages 19-20 in particular).

Applicant's arguments filed 11-30-05 have been fully considered but are not found persuasive.

Applicant argues the disclosure of the CA 2,255,423 document and the priority document 09/215,328 are equivalent and so a rejection under 35 USC 102 is untenable.

The claims are drawn to a coefficient of greater than 1, which only find support in the instant specification. The date for the claims 4-5 and 22-24 is 7-6-01

The CA 2,255,423 document discloses the claim limitation of "coefficient of about 1.5", meeting the limitation of greater than 1. The prior art rejection is maintained.

Art Unit: 1644

7. The rejection of claims 1-3, 6-12, 14-24 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 6,287,564 has been obviated by the proper filing of a Terminal Disclaimer over US Patent 6,287,564.


8. Claim 21 is objected to as being dependent upon rejected claims.

9. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Nolan whose telephone number is 571-272-0847.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Christina Chan, can be reached at 571-272-0841.

  
Patrick J. Nolan, Ph.D.

Primary Examiner, Group 1640

February 28, 2006